

## **CIVIL SERVICE COMMISSION MINUTES**

**February 21, 2001**

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt  
Sigrid Pate  
Gordon Austin  
Barry I. Newman

Absent was:

Roy Dixon

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES  
February 21, 2001

1:30 p.m.      CLOSED SESSION:    Discussion of Personnel Matters and Pending Litigation

2:30 p.m.      OPEN SESSION:    Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>2,3,6,7,8</u>	<u>4</u>		

COMMENTS Motion by Pate to approve all items not held for discussion; seconded by Newman. Carried.

**CLOSED SESSION AGENDA**  
**County Administration Center, Room 458**  
**(Notice pursuant to Government Code Sec. 54954.2)**  
**Members of the Public may be present at this**  
**location to hear the announcement of the**  
**Closed Session Agenda**

A. Commissioner Pate: Patrick Cooney, Esq., on behalf of **James Toothaker**, Supervising Probation Officer, Department of Probation, alleging retaliation discrimination by the Department of Probation.

B. Commissioner Dixon: James Gattey, Esq., on behalf of **James Phillips**, former Deputy Probation Officer, appealing an Order of Removal and Charges from the Department of Probation.

C. Commissioner Austin: James Varga, Esq. on behalf of **Luis Estrada**, former Eligibility Technician, appealing an Order of Removal and Charges from the Health and Human Services Agency.

D. **Caloca v. County of San Diego and San Diego County Civil Service Commission**, Superior Court No. 706089 - Conference with counsel.

**REGULAR AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

**MINUTES**

1. Approval of the Minutes of the regular meeting of February 7, 2001.  
**Approved.**

## DISCIPLINES

2. Commissioner Dixon: James Gattey, Esq., on behalf of **James Phillips**, former Deputy Probation Officer, appealing an Order of Removal and Charges from the Department of Probation.

### FINDINGS AND RECOMMENDATIONS:

Employee was charged with 1) Dishonesty (false information in records); 2) Inefficiency; 3) Conduct unbecoming an officer of the Probation Department; 4) Failure of good behavior; and 5) Acts incompatible with and inimical to the public service. Employee has been a Deputy Probation Officer in the Juvenile Field Services Division of the Department since November 1995. In March 1998, Employee's supervisor discovered that he was making entries into his contact logs to document events before their actual occurrence. Employee was notified that prematurely making entries into contact logs was unacceptable and that his entries were fraudulent. Employee sought counseling and was diagnosed as having obsessive compulsive traits. In the latter half of 1999, Employee again began to have feelings of anxiety about completing his work and began to make log entries in anticipation of the actual events. In addition, Employee began to prepare draft reports to the court 3-4 months in advance of a hearing. An Internal Affairs investigation was initiated that resulted in the Order of Removal. Employee was found to have made false log entries of school visitations, home visits, office visits, probationers' compliance with fines and completion of various court ordered programs, and court reports.

While some of Employee's explanations were plausible, a pattern was revealed and his conduct culminated in false representations to the court. While his original motivation may have stemmed from anxiousness about completing his work, he was willing to sacrifice his integrity, as well as the integrity of the system. By a preponderance of evidence, the Department proved all of the charges in Causes I through V of the Order of Removal and Charges. It is therefore ordered that the Order of Removal be affirmed; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Newman to approve Findings and Recommendations; seconded by Austin. Carried.**

3. Commissioner Austin: James Varga, Esq. on behalf of **Luis Estrada**, former Eligibility Technician, appealing an Order of Removal and Charges from the Health and Human Services Agency.

### FINDINGS & RECOMMENDATIONS:

Employee was charged with Cause I - Dishonesty; Cause II - Inefficiency; Cause III - Insubordination; Cause IV - Conduct unbecoming an employee of the County; Cause V - Failure of good behavior; and Cause VI - Acts incompatible with or inimical to the public service. Employee was hired as an Eligibility Technician in 1999. The charges arose while Employee was on vacation. A temporary worker discovered various unprocessed MediCal eligibility documents and unopened mail in Employee's desk. Employee had made computer entries re-certifying MediCal eligibility based on review of such eligibility, when in fact, eligibility had not been reviewed. Employee did not deny the factual allegations of the Order of Removal, but did deny the Agency's charge of dishonesty. Employee argued that he had fallen behind in his work and he acted only to prevent disruption of benefits to the Agency's clients. The Agency

asserted that the charge of dishonesty formed the basis for Employee's termination and if it were not for the dishonesty, the discipline level would have been less.

Employee testified that his caseload was heavier than he could handle and that he fell increasingly behind. Compounding Employee's predicament was a serious illness concern that he suffered through during this period of time, which served as a distraction. Employee's direct supervisor did not recommend termination. He confirmed that Employee was having trouble with his caseload and that Employee's mistakes did not lead to actual erroneous eligibility determinations. As a result, the Hearing Officer was unable to make the requisite finding that Employee intended to be dishonest. However, he should have been more assertive and forthcoming in informing his supervisor of his predicament enabling his supervisor to adjust his caseload. As a result, the Hearing Officer differs from the Agency's conclusions as to Employee's intent. Employee is not guilty of Causes I, III, and V (failure of good behavior). Employee was found guilty of Causes II, V (conduct unbecoming an employee of the County); and VI. It is therefore ordered that the Order of Removal be reduced to a thirty calendar-day suspension; that Employee be awarded back pay, benefits and interest from the date of his termination to the date of this decision, less the thirty calendar-day suspension referenced above; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Austin to approve Findings and Recommendations; seconded by Newman. Carried.**

## **SELECTION PROCESS**

### **Complaints**

4. **Michael Rossler**, Housing Specialist I, appealing his non-selection for the classification of Housing Specialist II in the Department of Housing and Community Development.

RECOMMENDATION: Continue to next meeting pending input from department.

**Continued.**

### **Findings**

5. **Adrienne Candelore**, appeal of removal of her name by the Department of Human Resources from the employment list for Court Services Officer.

RECOMMENDATION: Ratify item No. 5. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

**Item No. 5 ratified.**

## **DISCRIMINATION**

### **Findings**

6. Commissioner Pate: Patrick Cooney, Esq., on behalf of **James Toothaker**, Supervising Probation Officer, Department of Probation, alleging retaliation discrimination by the Department of Probation.

## FINDINGS & RECOMMENDATIONS:

Appellant (a supervising probation officer) filed a complaint with the Commission on November 2, 2000 alleging that his recent transfer was an act of retaliation stemming from a previous gender discrimination complaint. Appellant has been with the Department since 1972 and since 1988 has been assigned to Camp Barrett, an honor facility. Evidence at the hearing substantiated that around March/April 2000, problems were addressed at the Camp, and there was talk about the need to reassign supervisors to help resolve the Camp problems. Appellant was informed that he would be reassigned to Juvenile Hall and replaced by a female. Appellant at that point filed a gender discrimination complaint with OIA. Following a caution from OIA, the Department informed OIA that it would replace Appellant with a male, but that Appellant would still be reassigned. In November, 2000, Appellant was physically reassigned from the Camp to Juvenile Hall.

At the hearing, Appellant failed to establish a prima facie case because he failed to prove a causal link between filing a gender discrimination complaint with OIA and the Department making a final decision to reassign him from Camp Barrett to Juvenile Hall after the OIA report was rendered. The Department proved that its action was taken for legitimate, non-retaliatory reasons by stating that it made its decision to reassign Appellant prior to its decision to replace him with a female. It is therefore ordered that the Civil Service Commission determine that the Probation Department did not retaliate against Appellant in this case; that the Commission continue to hold in abeyance Appellant's request for a Civil Service Rule XI investigation; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission read and file this report.

**Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.**

## OTHER MATTERS

### Seal Performance Appraisal

7. **Steven Ruff**, Sheriff's Sergeant, requesting the sealing of a performance appraisal for the period April 7, 1999 to April 7, 2000. (Continued from Commission meetings of December 6, 2000, January 17, 2001 and February 7, 2001.)

RECOMMENDATION: Grant Request.

Commissioner Newman requested that this matter be addressed in order to remind the Commission of his stance regarding the sealing of performance appraisals. He asked the Commission to consider that requests to seal should not be mandatory, but should be permissive. Commissioner Austin agreed, but because Appellants Ruff and Hill (item 8 below) have been continued for several meetings, he felt it only fair that the Commission vote on these matters. In his absence, Commissioner Dixon provided written input indicating his support of sealing the performance appraisals of Steven Ruff and Phillip Hill.

**Motion by Pate to accept staff recommendation; seconded by Brummitt. Carried.**

**Austin -- Abstained.**  
**Newman -- No.**

8. **Philip Hill**, Senior Clerk, Department of Probation, requesting the sealing of a performance appraisal for the period May 8, 1999 to January 14, 2000. (Continued from Commission meeting of January 17, 2001 and February 7, 2001.)

RECOMMENDATION: Grant Request.

See discussion (item No. 7) above.

**Motion by Pate to accept staff recommendation; seconded by Brummitt. Carried.**

**Austin -- Abstained.**  
**Newman -- No.**

#### **Extension of Temporary Appointments**

9. Health and Human Services Agency  
1 Estate Assistant (Leticia Faucher)

RECOMMENDATION: Ratify Item No. 9.

**Item No. 9 ratified.**

10. Public Input.  
None.

#### **OFF DOCKET**

**Motion by Newman to accept Off Docket Item. Seconded by Pate. Carried.**

11. In the Matters of the appeals of Victor Caloca, Ronald Cuevas, Rick Simica, regarding the Findings of the Citizens Law Enforcement Review Board.

RECOMMENDATION: Assign a Hearing Officer. Schedule and conduct hearings for one day.

**Staff recommendation approved. Commissioner Newman assigned.**

ADJOURNMENT: 4:00 p.m.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE MARCH 7, 2001.**